

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10 This Report and Recommendation is made to the Honorable Larry R. Hicks, United States  
11 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
12 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's "Motion for Emergency  
13 Preliminary Injunction. FRCP Rule 11" (#57). Defendant opposed (#61) and plaintiff replied  
14 (#64). For the reasons stated below, the court recommends that plaintiff's motion (#57) be denied.

## I. HISTORY AND PROCEDURAL BACKGROUND

16 Plaintiff Felton L. Matthews (“plaintiff”), a *pro se* prisoner, is currently incarcerated by  
17 the Nevada Department of Corrections (“NDOC”) at Ely State Prison (“ESP”) (#16). Plaintiff  
18 brought his original action pursuant to 42 U.S.C. § 1983, alleging violations of his First  
19 Amendment right to freedom from retaliation and his Fifth Amendment right against double  
20 jeopardy, while he was incarcerated at Lovelock Correctional Center (“LCC”) (#15). Plaintiff  
21 names as defendants Linda Buck, correctional officer at LCC, Terry Lindberg, supervisor of unit  
22 3B at LCC, Jack Palmer, LCC warden, and Howard Skolnik, director of NDOC. *Id.*

23 Plaintiff filed this preliminary injunction on July 30, 2008. Plaintiff requests the court  
24 grant him the following:

25                   “1. Bivens Act jurisdiction for unknown CCDC actor;  
26                   2. Injunction on the use of the NDOC-CCDC I-files and C-file  
27                   right now!  
28                   3. Injunction on anymore mail tamperings and blocks from and to  
any court. (There are new blocks); and

1                   4. A damned evidentiary hearing with an order for copies above  
 2                   NDOC AR 711 to show the court the evidence. This is pending  
 3                   discharge with prejudice if the pardon's board refuses to capitulate  
 4                   as they now know about the conduct."

5                   #191, p. 4 (emphasis in original).

6                   The court notes that plaintiff is proceeding *pro se*. "In civil rights cases where the plaintiff  
 7                   appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit  
 8                   of any doubt." *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988);  
 9                   see also *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

## 9                   **II. DISCUSSION & ANALYSIS**

### 10                  **A. Discussion**

#### 11                  **1. Mootness**

12                  "Article III of the Constitution limits federal courts to the adjudication of actual, ongoing  
 13                  controversies between litigants." *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528  
 14                  (1988). "Mootness is a jurisdictional issue, and 'federal courts have no jurisdiction to hear a case  
 15                  that is moot, that is, where no actual or live controversy exists.'" *Foster v. Carson*, 347 F.3d 732,  
 16                  745 (9<sup>th</sup> Cir. 2003), quoting *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9<sup>th</sup> Cir. 1999).  
 17                  "If there is no longer a possibility that [a litigant] can obtain relief for his claim, that claim is  
 18                  moot and must be dismissed for lack of jurisdiction." *Id.*, quoting *Ruvalcaba v. City of Los  
 19                  Angeles*, 167 F.3d 514, 521 (9<sup>th</sup> Cir. 1999).

### 20                  **B. Analysis**

21                  This court recommended summary judgment be granted for defendants as to all three  
 22                  counts of plaintiff's complaint (#82). Therefore, no actual controversy continues to exist and there  
 23                  is no longer a possibility that plaintiff can obtain relief for his claims. Plaintiff's motion for  
 24                  preliminary injunction must thus be dismissed as moot.

## 25                  **III. CONCLUSION**

26                  Based on the foregoing and for good cause appearing, the court concludes that plaintiff's  
 27                  motion for emergency preliminary injunction (#57) is now moot as defendants' motion for  
 28                  summary judgment (#66) was recommended granted by this court (#82). As such, the court

1 recommends that plaintiff's motion (#57) be **DENIED**.

2 The parties are advised:

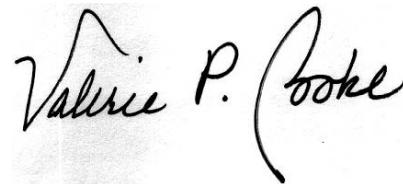
3 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
4 the parties may file specific written objections to this report and recommendation within ten days  
5 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
6 Recommendation" and should be accompanied by points and authorities for consideration by the  
7 District Court.

8 2. This report and recommendation is not an appealable order and any notice of appeal  
9 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's  
10 judgment.

11 **IV. RECOMMENDATION**

12 **IT IS THEREFORE RECOMMENDED** that plaintiff's motion for preliminary  
13 injunction (#57) be **DENIED**.

14 **DATED:** January 30, 2009.



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17 **UNITED STATES MAGISTRATE JUDGE**  
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